GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

BENGAL SECRETARIAT
LIBRARY

ACT XVII OF 1864 (OFFICIAL TRUSTEES),

AS MODIFIED UP TO THE 1ST JULY, 1890.

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STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART	XIV of 1870. XII of 1876.
AMENDED	II of 1890, ss. 1-7.

The following changes have been made in reprinting—

(1) Repealed matter has been omitted, explanatory notes being inserted.

(2) The amendments made by Act II of 1890 have been inserted in their proper places, with explanatory foot-notes.

(3) In some instances marginal notes have been added; in others they have been shortened.

(4) Lengthy sections have sometimes been divided into clauses and paragraphs.

(5) Arabic numerals have been substituted for the Roman numbers used in the original edition to denote the section-numbers.

(6) A table of contents has been added.

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BENGAL SECRETARIAT LIBRARY

ACT No. XVII of 1864.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 24th March, 1864.)

An Act to constitute an Office of Official Trustee.

[As modified up to the 1st July, 1890.]

WHEREAS it is expedient to amend the law relating to Official Trustees, and to constitute an Office of Official Trustee; It is enacted as follows:— Preamble.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the context repugnant to such construction, that is to say:— Interpretation.

[a]The word "Government" shall mean, in relation to the Presidency of Fort William in Bengal, the Governor General in Council; in relation to the Presidency of Fort St. George, the Governor of Fort St. George in Council; and, in relation to the Presidency of Bombay, the Governor of Bombay in Council: "Government."

The expression "High Court" shall mean Her Majesty's High Courts of Judicature at Fort William in Bengal, Fort St. George, and Bombay respectively in the exercise of their original civil jurisdiction. "High Court."

The expression "Chief Justice" shall mean the Chief Justice or Acting Chief Justice for the time being of any of the said High Courts. "Chief Justice."

The word "person" shall include a corporation. "Person."

Words importing the singular number shall include the plural, and words importing the plural number shall include the singular. Number.

Words

[a]The definition of the word "Government" in s. 1 was inserted by Act II of 1890, s. 1

Gender

Words importing the masculine gender shall include females.

2. [*Repeal of Act XVII of 1843.*] *Repealed by Act XIV of 1870.*

Construction of references to Presidencies.

[a]2. In this Act references to the Presidency of Fort William in Bengal, the Presidency of Fort St. George and the Presidency of Bombay shall, as regards all persons for whom the Governor General in Council has for the time being power to make laws and regulations, be read as references to the Presidency of Bengal, the Presidency of Madras and the Presidency of Bombay, respectively, as those expressions are severally defined in the law[b] for the time being in force relating to the office and duties of Administrator General.

Official Trustees under Act XVII of 1843 continued.

3. Every Official Trustee appointed under[c] Act XVII of 1843[d] shall, save as regards the remuneration to be received by him, hold and execute the trusts of which he is Trustee in all respects as if he were an Official Trustee appointed under this Act.

Number of official Trustees.

4. In each of the Presidencies of Fort William in Bengal, Fort St. George and Bombay there shall be an Official Trustee.

Titles.

The said Official Trustees shall be called the Official Trustee of Bengal, the Official Trustee of Madras, and the Official Trustee of Bombay, respectively.

Appointment, suspension and removal of Official Trustees.

[e]5. Every Official Trustee appointed under this Act[f] shall be appointed and may be suspended or removed from his office by the Government.

Administrator

6. The Administrator General or Officiating Administrator

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[a] This section 2 was inserted by Act II of 1860, s. 2.

[b] See the revised edition of Act II of 1874 as modified up to the 1st July, 1890, published by the Legislative Department.

[c] Certain formal words of s. 3, which were repealed by Act XII of 1876, have been omitted.

[d] Act XVII of 1843 was repealed by the original s. 2 of this Act.

[e] This section was substituted for the original s. 5 by Act II of 1890, s. 3.

[f] Every person holding the office of Official Trustee at the commencement of Act II of 1890 is to be deemed to have been appointed under Act XVII of 1864 as amended by Act II of 1890—see Act II of 1890, s. 8.

ministrator General for the time being of any of the said Presidencies shall be eligible for the office of Official Trustee of that Presidency. tor General may be Official Trustee.

Every Official Trustee appointed under this Act shall give security for the due execution of the duties of his office in such manner and to such amount as the Government[a] shall direct. Security to be given by Official Trustee.

7. [b]It shall be lawful for the Government from time to time to grant leave of absence to the Official Trustee, but subject always to such and the like rules as may be for the time being in force as to leave of absence of officers attached to the High Court.[b] Leave of absence of Official Trustee.

Whenever any Official Trustee shall obtain leave of absence, it shall be lawful for the Government to appoint some person to officiate as Official Trustee,[b] and such person while so officiating shall be subject to the same conditions and be bound by the same responsibilities as the Official Trustee, and he shall be deemed to be the Official Trustee for the time being under this Act, and shall be liable to give security for the due execution of the duties of his office in like manner as if he had been appointed Official Trustee. Appointment of person to officiate.

8. If any person shall be about to grant, assign or settle any property, moveable or immoveable, of what nature or kind soever, upon or subject to any trust, whether for a charitable purpose or otherwise, it shall be lawful for such person, with the consent of the Official Trustee, to appoint him, by the deed creating the trust, to be the trustee of such settlement; Official Trustee may, with consent, be appointed Trustee of settlement by grantor, &c.

and upon such appointment the property so granted, assigned or settled shall vest in such officer and his successors in office, and shall be held by him and them upon the trust declared and contained in the said deed: Vesting of property.

Provided always that the consent of the Official Trustee shall be recited in the said deed, and that Recital of consent.

the

[a] The word "Government" in s. 6 was substituted for the original words by Act II of 1890, s. 4.

[b-b] These words in s. 7 were substituted for the original words by Act II of 1890, s. 5.

the deed shall be duly executed by the Official Trustee:

Provided also that no trust for any religious purpose shall ever be held by the Official Trustee, under this or under any other section of this Act.

Remuneration of Official Trustee appointed under section 8.

9. Every Official Trustee appointed trustee of any property under the last preceding section shall be entitled to receive by way of remuneration in that behalf such sum or sums only as he shall by the deed of settlement be declared to be entitled to receive.

Other circumstances under which Official Trustee may be appointed Trustee of property.

10. If any property is subject to a trust, whether for a charitable purpose or otherwise, and there shall be no trustee willing to act or capable of acting in the trusts thereof who is within the local limits of the ordinary or extraordinary original civil jurisdiction of the High Court, or

if property is subject to a trust, and all the trustees, or the surviving or continuing trustee and all the persons beneficially interested in the said trust, shall be desirous that the Official Trustee shall be appointed in the room of such trustees or trustee,

then and in any such case it shall be lawful for the High Court on petition, and with the consent of the Official Trustee, to appoint the Official Trustee to be the trustee of such property;

and upon such appointment such property shall vest in the Official Trustee and his successors in office, and shall be held by him and them upon the same trusts as the same were held previous to such appointment.

Rate of commission under section 10.

11. The Official Trustee shall be entitled by way of remuneration, in respect of all trust-property transferred to him under the last preceding section, to a commission, the rate of which shall be as follows, that is to say,—

on all capital moneys received by him, a commission of one-half per cent. on receiving the same;

on all capital moneys invested by him, a commission of one-half per cent. on investing the same;

on

on all sums received by him by way of interest or dividends in respect of moneys invested, a commission of three-quarters per cent.;

on all rents collected by him, a commission of two and a half per cent.:

Provided that the High Court, by its order appointing the Official Trustee to be trustee of such property, may, for special reasons to be recorded by the Court, direct that the Official Trustee shall be entitled by way of remuneration, in respect of the capital moneys, sums and rents aforesaid, or any of them, to a commission at rates or at a rate to be specified in the order and exceeding the rates or rate hereinbefore in this section prescribed.

What expenses, &c., commission to cover.

12. The Official Trustee shall defray all the expenses of the establishment necessary for his office, including the provision of office accommodation, together with all other charges to which the said office shall be subject, except those for which express provision is made by this Act, and except those costs of litigation and the like which a trustee would, under ordinary circumstances, be entitled to pay for out of the trust moneys in his hand.

The commission to which the Official Trustee shall be entitled is intended to cover all the expenses and risk and responsibility of management, collection and distribution.

Official Trustee to be sole trustee.

13. It shall in no case be lawful to appoint the Official Trustee to be a trustee along with any other person; but the Official Trustee shall always be sole trustee.

Investment of trust-money.

14. The Official Trustee shall cause all capital moneys received by him to be invested in Government securities, or otherwise as the Court shall direct;

Alteration of improper investment.

and, if in any case the trust-funds or any part of them shall, at the time of their vesting in the Official Trustee

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* This proviso to s. 11 was added by Act II of 1890, s. 6.

Trustee be invested otherwise than as provided in the deed or will creating the trust or than as ordered by the Court, it shall be the duty of the Official Trustee, as soon as he reasonably can, to realize the funds so improperly invested, and to invest the same in Government securities or otherwise as the Court shall direct.

High Court may make orders as to trust-property vested in Official trustee.

15. The High Court may make any such orders as shall seem to it necessary respecting any trust-property vested in the Official Trustee, or the interest or produce thereof.

All such orders shall be made on petition, unless the Court shall direct a suit to be instituted.

Re-transfer of trust-property to original, or transfer to other, trustee.

16. Nothing in this Act shall prevent the re-transfer of any trust-property which may have become vested in the Official Trustee to the original or any subsequently appointed trustee, or to such person as the Court shall direct, unless otherwise provided by the deed or will creating the trust.

Order of appointment of Official Trustee.

17. All orders which shall be made appointing any Official Trustee to act as trustee in virtue of his office shall appoint him by his name of office, and shall authorize the Official Trustee for the time being of the same Presidency to act as Official Trustee of the property to which such order shall relate:

On death, &c., of Official Trustee, property to vest in successor.

and all property and interests which at the time of the death, resignation or removal from office of any Official Trustee shall be vested in him by virtue of such order, shall upon such death, resignation or removal cease to be vested in him, and shall vest in his successor in office immediately upon his appointment thereto;

Transfer of books, &c.

and all books, papers and documents kept by such Official Trustee by virtue of his office shall be transferred to and vested in his successor in office.

Official Trustee to sue or be sued by his name of office.

18. All actions, suits or other proceedings which shall be commenced by or against any Official Trustee in his official character may be brought by or against him by his name of office;

and

and no suit, action or other proceeding already commenced or which shall be commenced by or against any person as Official Trustee, either alone or jointly with any other person, shall abate by reason of the death, resignation or removal from office of any such Official Trustee; Suit not to abate by death, &c.

but the same may, by order of the Court and upon such terms as to the service of notices or otherwise as the Court may direct, be continued against his successor immediately upon his appointment, in the same manner as if no such death, resignation or removal had occurred: Continuance of suit.

Provided that nothing herein contained shall render any such successor personally liable for any costs incurred prior to the order for continuing the action or suit against him, or shall release an Official Trustee who has resigned or been removed from his office, or the heirs, executors, administrators or representatives of a deceased Official Trustee, from being liable for any such costs. Liability for prior costs.

19. Every Official Trustee appointed under this Act shall enter into books, to be kept by him for that purpose, separate and distinct accounts of each trust of which he is the trustee, and of all such sums of money and securities for money, goods and things, as shall come to his hands, or to the hands of any person employed by him, or in trust for him, under this Act, and likewise of all payments made by him on account of such trust, and of all debts due by or to the same, specifying the dates of such receipts and payments respectively; Accounts to be kept by Official Trustee.

which said books shall be kept in the Official Trustee's office, and shall be at all times open for the inspection of the Chief Justice and of any person authorized by him to demand inspection thereof. Inspection of books.

20. The Chief Justice shall have power, from time to time, to make and alter any general rules and orders consistently with the provisions of this Act— Chief Justice may make and alter rules and orders for custody of trust-funds, &c.

for the safe custody of the trust-funds and securities

securities which shall come to the hands or possession of the Official Trustee, and

for the remittance to Europe or elsewhere of all sums of money which shall be payable or belong to persons resident in Europe or elsewhere, or in other cases where such remittances shall be required,

and generally for the guidance and government of the Official Trustee in the discharge of his duties;

and may by such rules and orders, amongst other things, direct what books, accounts and statements, in addition to those mentioned in this Act, shall be kept by the Official Trustee, and in what form the same shall be kept, and what entries the same shall contain, and where the same shall be kept, and where and how the funds and securities and other the property belonging to the trust of which the Official Trustee is the trustee shall be kept or invested or deposited, and how any remittances thereof shall be made.

Publication of orders, &c.

21. Such orders shall be published in the official Gazette, and it shall be the duty of the several Official Trustees to obey and fulfil the same, and the same shall be a full authority and indemnity for all persons acting in pursuance thereof.

Official Trustee to furnish annual schedules, which shall be filed in High Court.

22. The Official Trustee of each of the said Presidencies shall once in every year, that is to say, on the first day of March, or on such other day as the Chief Justice shall direct, deliver to the Chief Justice—

a true schedule showing the gross amount of all sums of money received or paid by him on account of each trust of which he is the trustee, and the balances during the year ending on the thirty-first day of December next before the day of delivering such schedule, and

a true list of all securities received on account of each of the said trusts during the same period; and also

a true schedule of all trusts which shall have come to an end or of which the Official Trustee shall

shall have ceased to be the trustee and the property subject to which shall have been paid or made over to the persons entitled to the same or to new trustees during the same period, specifying the nature and amount or value of such property and the persons to whom paid or made over.

Filing and inspection of schedules.

The Chief Justice shall cause the said schedules to be filed as record in the High Court; but it shall not be lawful for any person to inspect the same or to make copies thereof, or of any part thereof, except on an order granted by the Chief Justice permitting him so to do.

Chief Justice to appoint auditors.

23. The Chief Justice shall from time to time appoint an auditor or auditors to examine the accounts of the Official Trustee at the time of the delivery of the said schedules and also at any other time when the Chief Justice shall think fit.

Auditors to examine schedules and accounts of Official Trustee and to report to Chief Justice.

24. The auditor or auditors shall examine the schedules and accounts, and report to the Chief Justice—

whether they contain a full and true account of every thing which ought to be inserted therein, and

whether the books which by this Act are, or which by any such general rules and orders as aforesaid shall be, directed to be kept by the Official Trustee, have been duly and regularly kept, and

whether the trust-funds and securities have been duly kept and invested and deposited in the manner prescribed by this Act or which shall be prescribed by any such rules and orders to be made as aforesaid.

Auditor's power to summon witnesses and to call for books, &c.

25. Every auditor shall have power—

to summon as well the Official Trustee as any other person or persons whose presence he may think necessary, to attend him from time to time; and

to examine the Official Trustee or other party or parties, if he shall think fit, on oath or solemn affirmation to be by him administered; and

to call for all books, papers, vouchers and documents which shall appear to him to be necessary for the purposes of the said reference;

Report to High Court of refusal or neglect to attend, or to produce books, &c.

and, if the Official Trustee or other person or persons when summoned shall refuse, or, without reasonable cause, neglect to attend or to produce any book, paper, voucher or document required, or shall attend and refuse to be sworn or make a solemn affirmation, when by law an affirmation may be substituted for an oath, or shall refuse to be examined, the auditor or auditors shall certify such neglect or refusal in writing to the High Court;

Penalty.

and every person so refusing or neglecting shall thereupon be punishable in like manner as if such refusal or neglect had been in contempt of the said High Court.

Costs of preparing schedules, &c, how paid.

26. The costs and expenses of preparing the said schedules and accounts and of every such reference and examination as aforesaid shall be defrayed by all the trust-estates to which such schedules or accounts shall relate, which costs and expenses, and the portion thereof to be contributed by each of the said trust-estates, shall be ascertained and settled by the auditor or auditors, subject to the approval of the Chief Justice, and shall be paid out of the said estates accordingly by the Official Trustee.

Matters to be reported by auditors.

27. If upon any such reference and examination the auditor or auditors shall see reason to believe—

that the said schedules do not contain a true and correct account of the matters therein contained, or which ought to be therein contained, or

that the trust-funds and securities have not been duly kept and invested or deposited in the manner directed by this Act, or which shall be directed by any such rules and orders as aforesaid, or

that the Official Trustee has failed to comply with the provisions and directions of this Act, or of any such rules and orders,

he

he or they shall report accordingly to the Chief Justice.

Proceedings upon such report.

28. The Chief Justice may refer every such report as last aforesaid to the consideration of the Advocate General for the Presidency, who shall thereupon, if he shall think fit, proceed summarily against the defaulter or his personal representative in the High Court by petition for an account, or to compel obedience to this Act or to such rules and orders as aforesaid, or otherwise as he may think fit, in respect of all or any of the trust-estates then or formerly under the charge of such defaulter;

and the Court shall have power, upon any such petition, to compel the attendance in Court of the defendant or defendants, and any witnesses who may be thought necessary, and to examine them orally or otherwise as the said Court shall think fit, and to make and enforce such order or orders as the Court shall think just.

Costs upon such proceedings, &c., how defrayed.

29. The costs, including those of the Advocate General, and of the reference to him, if the same shall be directed by the Court to be paid, shall be defrayed either by the defendant or defendants, or out of the trust-estates rateably as the said Court shall direct;

and, whenever any costs shall be recovered from the defendant or defendants, the same shall be repaid to the estates by which the same shall have been in the first instance contributed, and the Court shall have power to order the Official Trustee or other person or persons, defendants, to receive his or her costs out of the said estates, if it shall think fit.

Effect and execution of orders.

30. Any orders which shall be made by any of the said High Courts shall have the same effect and be executed in the same manner as decrees.

Who may apply for order under Act.

31. Any order under this Act may be made on the application of any person beneficially interested in any trust-property, or of any trustee thereof, whether under disability or not.

Executor or administrator may

32. If any infant or lunatic shall be entitled to any

pay to Official Trustee legacy, share, &c., infant or lunatic.

any gift or legacy or residue or share thereof, it shall be lawful for the executor or administrator by whom such legacy, residue or share may be payable or transferable, or the party by whom such gift may be made, or any trustee of such gift, legacy, residue or share, to pay or transfer the same to the Official Trustee appointed under this Act:

Leave of Court.

Provided that the leave of the High Court to make such payment or transfer shall be first obtained by motion made on petition.

Provisions applied to such property.

Any money or property paid or transferred to the Official Trustee or vested in him under this section shall be subject to the same provisions as are contained in this Act as to other property vested in such Official Trustee under the provisions thereof.

Compliance with requisitions for returns.

*33. The Official Trustee shall comply with such requisitions as may be made by the Government for returns and statements, in such form and manner as the Government may deem proper.

Division of the Presidency of Fort William in Bengal into Provinces.

34. (*1*) Notwithstanding anything in the foregoing provisions of this Act, the Governor General in Council, upon the occurrence of any vacancy in the office of the Official Trustee of Bengal, may, by notification in the Gazette of India,—

(*a*) divide the Presidency of Fort William in Bengal into so many Provinces as he thinks fit,

(*b*) define the limits of each of those Provinces, and

(*c*) appoint an Official Trustee for each Province,

and, subject to the provisions of this section, the following consequences shall thereupon ensue, namely:—

(i) the office of Official Trustee of Bengal shall cease to exist:

(ii) the

* Ss 33 and 34 were added by Act II of 1890, s. 7

(ii) the Official Trustee of a Province shall have the like rights and privileges, and perform the like duties, in the territories and dominions included in the Province as the Official Trustee of Bengal had and performed as Official Trustee therein:

(iii) the functions of the Government under this Act shall, as regards the territories and dominions included in the Province, be discharged by the Governor General in Council:

(iv) the functions of whatsoever kind assigned by the foregoing provisions of this Act to the High Court of Judicature at Fort William in Bengal in respect of the territories and dominions included in a Province shall be discharged by such High Court as the Governor General in Council may, by notification in the Gazette of India, appoint in this behalf:

(v) in the foregoing provisions of this Act, the word 'Presidency' shall be deemed to include a Province, the expression 'Chief Justice' the Chief Justice, senior Judge or sole Judge, as the case may be, of a High Court appointed by the Governor General in Council under clause (iv) of this sub-section, and the expression 'Advocate General' a Government Advocate or other officer appointed by the Governor General in Council to discharge for a Province the functions under this Act of an Advocate General for a Presidency: and,

(vi) generally, the provisions of the foregoing sections and of any other enactment for the time being in force with respect to the Official Trustee of Bengal shall, in relation to a Province, be construed, so far as may be, to

to apply to the Official Trustee appointed for the Province under this section.

(*2*) Any proceeding which was commenced before the publication of the notification dividing the Presidency of Fort William in Bengal into Provinces, and to or in which the Official Trustee of Bengal in his representative character was a party or was otherwise concerned, shall be continued as if the notification had not been published, and the Official Trustee of the Province in which the Town of Calcutta is comprised shall for the purposes of the proceeding be deemed to be the successor in office of the Official Trustee of Bengal, and shall hold and execute the trusts of which immediately before the publication of the notification the Official Trustee of Bengal was trustee in all respects as if he were such successor.

(*3*) The Court of the Recorder of Rangoon shall be deemed to be a High Court for the purposes of clause (iv) of sub-section (*1*).

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